IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL.

Civil Revision No. 413/2001
(Old No. 170/1994)

UCO Bank, Head Office at 10, Barabourne
Road, Calcutta, Branch at Haldwani, through
Its Branch Manager -------- Defendant/ Revisionist.

Vs.

1- Prem Dass Khanna-abated.
2- Kishan Lal Khanna-abated.
3- Govind Ram Khanna
4- Harbansh Lal Khanna
All sons of Prabhoo Dayal Khanna
R/o Prabhoo Dayal Khanna Market,
Bareilly Road, Haldwani,
District Nainital ---------- Plaintiffs/ Opp.Parties.

Sri Chandra Mauli Shah, learned counsel for the revisionist.
Sri Bindesh Kumar Gupta, learned counsel for the Opp.Parties.

(Hon'ble B.C. Kandpal, J.)

This revision has been filed by the defendant against the judgment and decree dated 6-12-1993, passed by the Add. District Judge/Special judge, Nainital, in J.S.C.C. Suit No. 12/1987, Prem Das Khanna and others Vs. United Commercial Bank.

2- The facts giving rise to the present revision are that the plaintiffs are the landlord of the tenanted property and the defendant was tenant. The agreed rate of rent was Rs. 1200/- per month. The plaintiffs also pleaded that the premises in suit are a new construction, therefore, the provisions of U.P. Urban Buildings (Regulation of Rent, Letting & Eviction) Act 1972, do not apply to it. According to the plaintiffs the defendant agreed to grant loan to the plaintiff to construct accommodation over first floor. Lateron the defendant did not pay the loan, hence the plaintiffs terminated the tenancy vide notice dated 11-6-1986 and filed suit for eviction as well as recovery of Rs. 18,720/- upto the date of termination of tenancy as arrears of rent and also claimed damages thereafter @ Rs. 2400/- per month for unauthorised use of the premises.

3- The defendant admitted the tenancy of the disputed premises. It was alleged that the notice given to the defendant to terminate the tenancy is illegal and the suit was liable to be dismissed. The defendant also alleged that the tenanted premises was vacated by it on 25-3-1991 and the rent has been paid upto 31.3.1991.

4- The plaintiffs examined Govind Ram as P.W.1 and filed documentary evidence. The defendant did not adduce any evidence. The J.S.C.C./ Addl. District Judge, after having heard learned counsel for the parties and perusing the material available on record, decreed the suit for recovery of Rs. 2400/- per month as pendentelite and future mesne profits for unauthorized use and occupation and also for the recovery of Rs. 55/- as expenditure of the notice.

5- Being aggrieved, the defendant/appellant has preferred the revision before the Allahabad High Court, which has been transferred to this court after creation of new State.

6- Heard learned counsel for the parties and perused the record.

7- Learned counsel for the defendant/revisionist has submitted that the agreed rent of the disputed premises was Rs. 1200/- per month and the learned J.S.C.C. has committed error in awarding the damages of Rs. 2400/- per month, more than the agreed rent, hence the finding of the learned J.S.C.C. are perverse and liable to be set aside.

8- On the other hand learned counsel for the plaintiffs/opposite parties has submitted that the disputed premises are new constructions and do not come within the purview of U.P. Act No. 13 of 1972, hence mesne profit and damages can be granted of amount exceeding monthly rate of rent, as there has been considerable increase in the monthly rent.

9- Perusal of record reveals that the plaintiffs in paragraph-3 of the plaint have specificially pleaded that the suit premises are new constructions and provisions of Act No. 13 of 1972 do not apply to it.

The defendant in paragraph -3 of its W.S. has simply denied the contents of the plaint. Neither the defendant has specifically raised this plea nor controverted the pleadings of the plaintiffs in this respect. P.W.1, Govid Ram, the sole witness, produced in the case, was not even cross-examined from the side of the defendant/revisionist, on the point. The defendant/revisionist has not been able to brought on record an kind of evidence to establish that the tenanted premises are within the purview of U.P. Urban Buildings (Regulation of Rent, Letting & Eviction) Act 1972. On the other hand the plaintiffs/O.Ps. had the specific case right from the beginning that the premises are new one and do not come within the purview of the aforesaid Act. Therefore, the provisions of Act No. 13 of 1972, do not apply to it.

10- So far as the amount awarded towards pendentelite and future mesne profits is concerned, the plaint case is that the rent of the suit premises was at a low rate than the market rate and it can fetch monthly rent of Rs. 6,000/-. In the notice dated 10-6-86 terminating the tenancy of the defendant, the plaintiff claimed Rs. 200/- per day as damages for unauthorized occupation of the defendant on the property in suit. P.W.1, Govind Ram has also deposed this fact before the court that the tenanted premises can fetch Rs. 6000/- per month. The JSCC awarded Rs. 2400/- per month as pendentilite and future mesne profits for unauthorized use and occupation.

11- Learned counsel for the revisionist has cited before me the case of **Union of India and others Vs. Smt. Urmila Rani Gaur and other,** reported in **Allahabad Rnt Cases, 1983 (2) page 304** and submitted that the damages at the enhanced rate cannot be awarded.

12- I have gone through the ruling and I am of the view that in view of the facts and circumstances of the present case, the ruling cited before me by the learned counsel for the revisionist, does not apply. I have already observed above that the provisions of Act No. 13 of 1972 do not apply in this case.

13- On the other hand the learned counsel fore the plaintiffs/opposite parties in support of his submission cited the following cases before me:-

1- **State of U.P. Vs. Mangal Sen Sahani;** reported in **Allahabad Rent Cases, 1985 (1) page 154.**

2- **Food Corporation of India and another Vs. M/S Durga Shakti Enterprises;** reported in **Allahabad Rent Cases, 1996 (1) page 153.**

3- **Union of India and another Vs. Smt. Suman Gupta and other;** reported in **2004(1) Allahabad Rent cases page 330.**

14- I have gone through the above cited rulings and I am of the view that these case laws are certainly helpful to the cause of plaintiffs/opposite parties.

15- Damages in the instant case could have been awarded at increased rate than the agreed rate of rent, particularly keeping in view the fact that there has been a gradual rise in rent. In my opinion keeping in view the fact that there has been a gradual rise in rent, the rate of pendente lite and future mesne profits fixed at Rs. 2400/- per month was just and proper and need no interference by this court.

16- For the reasons aforesaid, the submission raised by the learned counsel for the revisionist, being devoid of any force, is rejected. The revision lacks merit and is liable to be dismissed.

14- Accordingly the revision is dismissed. The impugned judgment and decree passed by the learned J.S.C.C. is hereby confirmed. No order as to cost.

15- The interim stay order dated 16-8-199, stands vacated.

(B.C. Kandpal, J.)

Dated: 13-12-2006
ISB